No. 83-1236

In the Supreme Court of the United States

OCTOBER TERM, 1983

CELESTE C. GRYNBERG, AND DEAN G. SMERNOFF, ETC.,
PETITIONERS

v.

WILLIAM P. CLARK, SECRETARY OF THE INTERIOR,
ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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TABLE OF AUTHORITIES

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Petitioners contend that the Department of the Interior's Board of Land Appeals (IBLA), the district court, and the court of appeals erred in finding that petitioner Celeste C. Grynberg breached her fiduciary duty to the Stephen Mark Grynberg Trust and violated Interior's prohibition against multiple filings for a single oil and gas lease when she filed oil and gas lease offers for the same parcel of land in her individual capacity and on behalf of the trust.

1.a. In February 1978, a simultaneous oil and gas lease drawing was held by the Department of the Interior for a parcel of land in Colorado.[1] Five hundred ninety-nine (599)

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[1]Pursuant to Section 17(c) of the Mineral Leasing Act, 30 U.S.C. 226(c), the Secretary of the Interior may lease a parcel of public land, which is not within a "known geological structure," to "the person first making application for the lease who is qualified to hold a lease * * *

drawing entry cards were submitted in competition for the subject lease. Among the cards filed were: a card on behalf of Celeste C. Grynberg and Dean G. Smernoff, in their capacity as co-trustees of the Stephen Mark Grynberg Trust; cards filed by the co-trustees on behalf of the Miriam Zela Grynberg Trust and the Rachel Susan Grynberg Trust; and cards filed by Celeste C. Grynberg and Jack J. Grynberg, parents of Stephen, Miriam, and Rachel, as individuals. The three Grynberg Trusts were created in 1969 by Jack Grynberg for the benefit of his and Celeste's children. Celeste Grynberg and Dean Smernoff, in their capacity as co-trustees for the Stephen Mark Grynberg Trust, drew first priority for the lease in question. Pet. App. A3.

b. On May 8, 1978, the Bureau of Land Management rejected the co-trustees' first priority offer on the ground that inclusion of the five Grynberg-related offers in a single drawing created an unfair situation that enhanced the mathematical advantage of the successful drawee over other applicants for the same parcel. The BLM determined that the Grynbergs had violated 43 C.F.R. 3112.5-2 (1978), which prohibits multiple filings by related entities. (The full text of the regulation is set forth at Pet. 6.) BLM concluded that prohibited multiple filings had been made because: (1) a parent of a trust beneficiary and the beneficiary's trust

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without competitive bidding." Because of the large number of applications received, it became difficult for Interior to determine which application was first filed. In response to that problem, the agency issued regulations under which all noncompetitive oil and gas lease applications for a given parcel are deemed to have been filed simultaneously. 43 C.F.R. 3112.1-2, 3112.2-1 (1978). Offerors are required to file their applications on drawing entry cards. Three cards are drawn at random, and the lease is issued to the first-drawn applicant (43 C.F.R. 3112.2-1(a)(3) (1978)), provided, among other things, that the successful applicant meets all regulatory requirements. The simultaneous oil and gas leasing program has been temporarily suspended for reasons unrelated to this case.

filed for the same parcel of land; (2) more than one family-related trust competed for the lease; and (3) one trustee, Celeste Grynberg, filed both on behalf of the trusts and as an individual. Pet. App. A24-A25.

c. The Grynbergs appealed BLM's decision to the IBLA. On November 30, 1979, the IBLA affirmed BLM's rejection of the co-trustees' lease offer (Pet. App. A23-A34). The IBLA held, after examining the trust instrument, that the filings by Celeste Grynberg individually and on behalf of the trust were prohibited because the success of either of them would benefit the other (*id.* at A30). The IBLA also held that the individual filing by Celeste Gynberg violated her fiduciary duty not to compete with the trust (*id.* at A30-A31).

d. The United States District Court for the District of Colorado affirmed the IBLA's decision (Pet. App. A10-A22).[2] The district court agreed that the parents would benefit if the trust were to win the lease because, in the event of financial disaster, trust assets could be used to satisfy the obligations of the parents to support the trust beneficiary (Pet. App. A17-A18). The court also agreed with the IBLA that Celeste Grynberg, as co-trustee, breached her fiduciary obligation to the trust by entering into competition with it (*id.* at A18-A19).

e. The court of appeals affirmed (Pet. App. A1-A9). It held that the co-trustees breached their duty to the trust, noting that had a trustee won the lease as an individual, he or she would have held it in trust for the beneficiary, thereby giving the trust a greater likelihood of success than is permitted by the applicable regulation (*id.* at A7). The court

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[2]The district court's decision was rendered in a consolidated opinion with *June Oil & Gas, Inc.* v. *Andrus*, 506 F. Supp. 1204 (D. Colo. 1981), aff'd, 717 F.2d 1323 (10th Cir. 1983), petition for cert. pending, No. 83-1235. Because the court of appeals rendered separate decisions, we are filing separate responses to the petitions.

also held that the trustees violated their fiduciary duty to the trust by entering into competition with it (*id.* at A8).[3]

2. The decision of the court of appeals does not conflict with any decision of this Court or any other court of appeals, and further review of the fact-bound situation presented by the financial arrangements of the Grynberg family is not warranted.

a. Petitioners assert (Pet. 8) that a breach of a trustee's fiduciary duty occurs only if the trustee enters into "substantial competition" with the beneficiary. Petitioners maintain (Pet. 9) that there was no substantial competition here because 597 other drawing entry cards were submitted for the lease parcel in question. Petitioners' argument is without merit.

The number of drawing entry cards filed for a particular parcel is irrelevant for purposes of showing substantial competition between the trustee and the trust. As both the district court (Pet. App. A18-A19) and the court of appeals (*id.* at A7) correctly noted, what is relevant is that Celeste Grynberg as an individual competed for the lease against the trust. A trustee is held to extremely high standards, and the well-being of the trust must be his or her first consideration. There is thus nothing novel about the court of appeals' holding that the trustee cannot compete with the trust in the acquisition of property. See, *e.g.*, *Wootten* v. *Wootten*, 151 F.2d 147 (10th Cir. 1945).

b. Petitioners assert (Pet. 10) that the decisions of the agency and the courts below are arbitrary and capricious

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[3]The court of appeals appears erroneously to have assumed that co-trustee Dean Smernoff filed a lease offer in his own behalf. He did not, but the court's mistaken assumption is of no consequence. It is sufficient that one of the trustees, petitioner Celeste Grynberg, entered into competition with the trust.

because they ignore certain mandatory language of the Stephen Mark Grynberg Trust. Petitioners refer to Article IV, Section I, of the Trust Agreement, which prohibits distributions by the co-trustees that would satisfy parental obligations. Because of this provision, petitioners maintain (Pet. 11) that there is no possibility that the Grynberg parents would benefit from the issuance of a lease to a Grynberg trust. Here, too, petitioners are wrong.

Trust provisions must be read and construed in a consistent manner. Petitioners' reading and interpretation of Article IV, Section I, of the Trust Agreement vitiates the purpose of the trust, which is the support of the minor child. The IBLA carefully scrutinized the trust instrument to ascertain the interests of the trust beneficiary relative to his parents. Article VI, the IBLA noted (Pet. App. A26), delineates specific support standards. That trust article provides that the beneficiary's "best interests" are to be construed liberally "and include not only the possibility of distributions for the support, medical care and education (including professional education) of said beneficiary but also the possibility of distributions for his comfort, convenience and happiness" (*ibid.*). The IBLA properly noted (*id.* at A30) that these items are direct parental obligations, and, therefore, any such payments necessarily would fulfill the parents' support obligations and would be to their benefit.

The district court agreed with the agency's findings. It expressly found (Pet. App. A16) that any payment from the trust for the child's general support, medical expenses, or education would fulfill the parents' obligation to support their child. Accordingly, the court held that the success of the trust directly benefits the parents. This common-sense holding is clearly correct.

3. Petitioners claim (Pet. 12) that the decisions below are arbitrary, capricious and discriminatory in that they treat lease offers filed by parents and their children less favorably

than lease offers filed by husbands and wives. Petitioners further contend that the decisions below thereby deprived the Grynberg trust of a vested property right.

As an initial matter, it is clear that the Grynberg trust never had a vested property interest. The mere filing of an offer to lease confers no vested property rights in the applicant. *Arnold* v. *Morton*, 529 F.2d 1101, 1106 (9th Cir. 1976); *Burglin* v. *Morton*, 527 F.2d 486, 488 (9th Cir. 1976); *McTiernan* v. *Franklin*, 508 F.2d 885 (10th Cir. 1975); *Hannifin* v. *Morton*, 444 F.2d 200, 203 (10th Cir. 1971). A lease application constitutes "a hope, or perhaps expectation, rather than a claim." *Schraier* v. *Hickel*, 419 F.2d 663, 666 (D.C. Cir. 1969).

In any event, the agency has broad authority to promulgate and interpret its own regulations. Pursuant to that authority, the IBLA has held a wide variety of interrelated interests sufficient to violate the multiple filing prohibition set forth in 43 C.F.R. 3112.5-2 (1978). See *Farrell L. Lines*, 40 I.B.L.A. 91 (1979); *William R. Boehm*, 36 I.B.L.A. 346 (1978); *Panra Corp.*, 27 I.B.L.A. 220 (1976); *Richard Donnelly*, 11 I.B.L.A. 170 (1973). These cases, as the IBLA noted (Pet. App. A28), illustrate the broad application of the multiple filing regulation in order to ensure an equal chance for every applicant who files a lease offer in a drawing. The facts of this case do not indicate any departure from that principle.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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APRIL 1984

DOJ-1984-04